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| BEATRIZ VILLEGAS |) | |
| Claimant |) | |
| |) | |
| VS. |) | |
| |) | |
| FAMILY RESTAURANTS, INC. |) | |
| Respondent |) | Docket No. 264,354 |
| |) | |
| AND |) | |
| |) | |
| GALLAGHER-BASSETT SERVICES |) | |
| Insurance Carrier |) | |

ISSUES

On August 14, 2003, the Board issued an Order remanding this claim to Judge Clark, "for hearing to afford the parties an opportunity to fully inform the court concerning the merits of the request to reopen the record."¹ Thereafter, neither claimant nor respondent contacted Judge Clark to schedule a hearing date and Judge Clark did not set the matter for hearing. Following receipt of what appears to be an ex parte communication from respondent's counsel, Judge Clark issued an Award on February 5, 2004 denying benefits.²

Claimant appealed that Award alleging "[n]o notice was given by the ALJ of any terminal dates or proposed dismissal of the action; and [c]laimant relying on this fact remained in Mexico for an extended stay because of pressing circumstances. Her right to due process was violated. The decision was arbitrary and rendered without notice and an opportunity to be heard."³ Claimant requests that the Board again remand this matter to the ALJ "to set deadlines for completion of the taking of evidence with notice to the parties and conduct further hearings as to the issue of whether the original deadline should have been extended under the extraordinary circumstances presented."⁴

Respondent asks that the ALJ's February 5, 2004 Award be affirmed. Respondent agrees with the ALJ's determination that claimant failed to sustain her burden of proving that she suffered a work-related accident on June 16, 1996. Respondent further argues that the ALJ had no obligation to schedule a hearing or set deadlines for the completion of the taking of evidence. Respondent, in its brief to the Board, lists the issues as follows:

1. Whether the second Award of Judge Clark violated claimant's rights or the procedural rules of worker's compensation.
2. Whether claimant suffered personal injury by accident on June 16, 1996.
3. Whether claimant's accidental injury arose out of and in the course of her employment with respondent.
4. Whether proper notice was given.

¹ Order at 3 (Aug. 14, 2003).

²The administrative file contains a letter dated January 30, 2004, from Kurt W. Ratzlaff to Judge Clark which is also stamped "received January 30, 2004." That letter from respondent's counsel to the ALJ does not show a copy being sent to claimant's counsel. A copy of that letter is attached to and made a part of this Order.

³Application for Review by Workers' Compensation Board of the Office of the Director of Workers' Compensation of the State of Kansas (filed Feb. 15, 2004).

⁴Claimant's Brief at 2 (filed March 25, 2004).

5. Whether timely written claim was made.
6. Nature and extent of disability.⁵

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein and having considered the parties' briefs and arguments, the Board makes the following findings of fact and conclusions of law:

Almost nothing has been done in this case in the eight years since the claimant's alleged accident. A regular hearing was begun on December 12, 2002, but due to what the ALJ described as "problems beyond everyone's control,"⁶ an interpreter was not scheduled to be present and, therefore, the claimant's testimony was not received. The ALJ nevertheless took stipulations and set terminal dates and then instructed counsel for the parties to "get together and take this lady's deposition at a date in the very near future" ⁷ The Board does not consider that regular hearing to have been a "first full hearing" as contemplated by statute.⁸ Thereafter, no additional hearings were held and no testimony was presented by either party. On May 8, 2003, after terminal dates had expired, the ALJ issued an Award denying benefits. That Award was the subject of the Board's previous Order.

The Board is in no way excusing the apparent neglect of this claim by claimant's counsel. Nevertheless, the Kansas Constitution requires that all parties receive procedural due process of law.⁹ This requirement likewise applies to administrative proceedings under the Kansas Workers Compensation Act.¹⁰ Fundamental elements of due process include notice and an opportunity to be heard.¹¹ In this case, due process was not afforded. Furthermore, on remand, the ALJ did not comply with the Board's August 14, 2003 Order.

⁵ Brief of Respondent and Its Insurance Carrier at 2 (filed April 15, 2004).

⁶R.H. Trans. at 5.

⁷*Id.*

⁸*See* K.S.A. 44-523; K.S.A. 44-534; K.S.A. 44-534a(b).

⁹Kan. Const. Bill of Rights, § 18.

¹⁰*Nguyen v. IBP, Inc.*, 266 Kan. 580, 972 P.2d 747 (1999); *State ex rel. Stephan v. O'Keefe*, 235 Kan. 1022, 1027, 686 P.2d 171 (1984).

¹¹*Nguyen* at 588-589; *Collins v. Kansas Milling Co.*, 207 Kan. 617, 620, 485 P.2d 1343 (1971).

WHEREFORE, the Appeals Board reverses the February 5, 2004 Award and again remands this matter to Administrative Law Judge John D. Clark to provide notice and conduct a hearing on the claimant's request to reopen the record and for such further proceedings and orders as may be necessary.

IT IS SO ORDERED.

Dated this _____ day of August 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

Attachment

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